

EXHIBIT A

DECLARATION OF DEREK J. WILSON

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ZERMATT HOLDINGS, LLC,

and

WFA of SAN DIEGO, LLC,

Plaintiffs,

v.

MARTIN CHRISTOPHER
("CHRIS") COOPER, an individual

and

CHRIS COOPER & COMPANY,
INC, an Ohio corporation,

Defendants.

Case No. 3:23-cv-01423-JJH

Judge Jeffrey J. Helmick

DECLARATION OF DEREK WILSON

I, Derek Wilson, hereby declare as follows:

1. I am competent to testify and have personal knowledge of the matters set forth herein.

2. I am an attorney licensed to practice law in California and Arizona. I am the owner and managing attorney of the Law Office of Derek J. Wilson. I have represented Peter Wheeler ("Wheeler") in his litigation with Zermatt Holdings, LLC ("Zermatt") and WFA of San Diego, LLC ("WFASD")(collectively "Plaintiffs") since January 2022.

3. I represented Wheeler at a mediation on October 21, 2022, which resulted in a settlement. Part of that agreement included an arbitration provision selecting Judge Link as the arbitrator on any future disputes related to the released claims, similar to the arbitration agreement reached in March 21, 2023 that includes Defendants. Thereafter, Plaintiffs and Wheeler had subsequent disputes that were

DECLARATION OF DEREK J. WILSON

addressed by a discovery order signed by Judge Frederick Link (Ret.) as intended by the October 2022 settlement agreement.

4. After discovery, a second mediation was held on March 21, 2023, which also resulted in a settlement. At this mediation, Cooper was included in the release specifically because of actions taken by Plaintiffs threatening litigation (as alluded to in the SAC ¶¶ 30-31). A number of subsequent disputes arose, and Judge Link has acted as an arbitrator, by among other things, holding telephonic hearings, and signing another discovery order. Due to the ongoing activity in the case, Judicate West initiated a new case number for the ongoing dispute, assigning it an arbitration number and subsequently holding an in-person hearing on these ongoing issues on August 14, 2023. A true and correct copy of the July 10-14, 2023, email thread wherein I requested a hearing from Judge Link regarding the threat of an Ohio lawsuit, and the new arbitration claim being opened by Judicate West, is attached to this declaration as **Exhibit 1**.

6. On July 31, 2023, in advance of the August 14, 2023 hearing, Judicate West sent email communication for the arbitration. This communication references the hearing on August 14, 2023 as an arbitration hearing. A true and correct copy of this email is attached to this declaration as **Exhibit 2**.

7. At the August 14, 2023, hearing, for which both parties submitted briefing, Judge Link indicated he would issue a ruling clarifying the Agreement in his capacity as an arbitrator based on his ongoing role in the disputes. Both counsel for Plaintiffs and Wheeler (myself) assented to this. Plaintiffs also claimed additional discovery was needed, resulting in a second discovery order compelling additional discovery reached after this hearing. In the resulting two-plus months, numerous versions of a potential order regarding clarification on the settlement were discussed between the attorneys for the Parties, but no agreement was reached on a mutually agreeable order to submit to Judge Link.

8. Immediately after the August 14, 2023 hearing, Judicate West sent

another communication for the arbitration. A true and correct copy of this email is attached to this declaration as **Exhibit 3**.

9. On October 24, 2023, Judge Link held another telephonic hearing for a status of the proposed order regarding settlement clarification. He asked the parties' attorneys to again meet and confer, and if no agreement was possible, to submit proposed order for him to review. The attorneys for Plaintiffs and Wheeler (myself) did meet and confer and ultimately could not reach an agreement on some of the language. On October 25, 2023, I submitted a proposed order in word format so Judge Link could alter it in any way he saw fit. A true and correct copy of this email and its word attachment are attached to this declaration as **Exhibit 4**. Similarly, counsel for Plaintiffs sent two proposed versions, a short one and a longer one. A true and correct copy of this email and its word attachments are attached to this declaration as **Exhibit 5**. This email thread's title is "agreement re forensic discovery" because it is a long thread that included an August discovery dispute between Plaintiffs and Wheeler that resulted in an order compelling discovery pursuant to the new July 2023 California arbitration case number.

10. On or about November 3, 2023, Judge Link signed an order, which aligned with Wheeler's proposed language and not Plaintiffs'. A true and correct copy of the email attaching the order from Judicate West is attached to this declaration as **Exhibit 6**.

11. Since the mediation on March 21, 2023, Plaintiffs have persisted in threatening Mr. Cooper. I requested Judge Link set a hearing to rule on these matters, but Plaintiffs went ahead and filed this action before a hearing could take place. I have since been retained by Cooper to file a new claim for breach of contract and other causes of action in the active July 2023 arbitration against Plaintiffs. That claim was filed on or about October 3, 2023, and Judicate West assigned it the very same case number it had been operating hearings under since at least July 14, 2023. This new claim related to Cooper's disputes against Plaintiffs is active. There is no

reason why Plaintiffs cannot initiate their own counterclaim against Cooper and CCCI should they choose to do so in the proper forum—arbitration at Judicate West in San Diego.

12. Cooper is a resident of San Diego, California, as is Wheeler. WFASD is headquartered in San Diego as are all of their employees (they work in the same office Wheeler used to manage, the former WFA that Plaintiffs purchased most of the assets from in January 2020).

I declare under penalty of perjury under the laws of the United States that I believe the foregoing is true and accurate and correct, in accordance with 28 U.S.C. §1746.

A handwritten signature in black ink, appearing to read "Derek Wilson", written over a horizontal line.

Derek Wilson

EXHIBIT 1

To the Declaration of Derek J. Wilson

RE: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. A305751

MaryAnn Campbell <maryann@judicategwest.com>
To: Derek Wilson <djw@djwlawoffice.com>, Matthew Holder <mholder@sheppardmullin.com>

Fri, Jul 14, 2023 at 9:14 AM

Good morning Counsel,

Thank you for your patience. I have connect with Judge Link regarding this matter and he has requested that a full day be set aside for a return hearing. As he is not available for the full day on August 10, please let me know if one of the following days works for each of you:

- August 4, 7, 9, 11 or 14-18

Please note that a new file will be opened for this now binding matter, your new case number is A305751. While we coordinate a date, the required disclosures will be compiled and provided to you along with an invoice for a retainer for the Arbitrator's continued services.

Thank you,
MaryAnn Campbell



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-

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From: Derek Wilson <djw@djwlawoffice.com>
Sent: Thursday, July 13, 2023 4:59 PM
To: Susi Bush <susi@judicategwest.com>; Matthew Holder <mholder@sheppardmullin.com>
Cc: MaryAnn Campbell <maryann@judicategwest.com>
Subject: Re: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. A296125

Hi MaryAnn:
I am following up regarding confirmation of 8/10 at 130 for the hearing with Judge Link and August 4 for the briefing deadline. Please let me know if this is confirmed. Opposing counsel, Matt Holder is cc'd on this email.

Thank you.
Derek
Derek J. Wilson

2251 San Diego Ave Ste. B-105

San Diego, CA 92110

Office: (858) 775-9679

FAX: (858) 357-8383

djwlawoffice.com

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On Tue, Jul 11, 2023 at 3:22 PM Derek Wilson <djw@djwlawoffice.com> wrote:

Hi MaryAnn, we propose August 10 at 130, with both parties submitting briefing by August 4.

Thank you, Susi.

Derek

Derek J. Wilson

Law Office of Derek J. Wilson

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On Tue, Jul 11, 2023 at 3:19 PM Susi Bush <susi@judicategwest.com> wrote:

Thank you for confirming August 8th, Mr. Wilson.

This would start at 1:30 pm.

After pulling up the file, I see that this file belongs to my amazing colleague, MaryAnn Campbell, and she will be in contact with you shortly.

Thank you,

Susi





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From: Derek Wilson <djw@djwlawoffice.com>

Sent: Tuesday, July 11, 2023 2:13 PM

To: Susi Bush <susi@judicategwest.com>

Subject: Re: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. S305592

Susi:

8/10 in the afternoon works for all parties. Would this be 1pm or 2pm?

Thank you.

Derek

Derek J. Wilson

Law Office of Derek J. Wilson

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On Tue, Jul 11, 2023 at 12:32 PM Susi Bush <susi@judicategwest.com> wrote:

Hello Derek,

Thank you for your quick reply. Judge Link is also out of town July 24th – 8/1, however he has a few dates available the first two weeks of August:

August: 4, 7, 9, 10 (PM), 11

Could one of these dates work?

Thank you,

Susi



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From: Derek Wilson <djw@djwlawoffice.com>
Sent: Tuesday, July 11, 2023 12:26 PM
To: Susi Bush <susi@judicategwest.com>
Subject: Re: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. A296125

Good morning, Susi. Thank you for the quick response. Opposing counsel, Matt Holder, says his client is not available on July 18 and he will be out of the country from July 19-29. Does Judge Link have any availability on July 31 or in the first two weeks of August?

Derek

Derek J. Wilson

Law Office of Derek J. Wilson

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On Tue, Jul 11, 2023 at 8:57 AM Susi Bush <susi@judicategwest.com> wrote:

Good morning, Mr. Wilson,

Thank you so much for reaching out.

After looking at Judge's calendar and the dates you provided to Judge Link, July 18th is the only date available within everyone's availability. Judge has both the morning or afternoon available.

Thank you,

Susi



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From: Derek Wilson <djw@djwlawoffice.com>
Sent: Tuesday, July 11, 2023 8:02 AM
To: Susi Bush <susi@judicatewest.com>
Subject: Fwd: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. A296125

Ms. Bush:

Judge Link asked me to reach out for his availability. Please see below and let me know what works for Judge Link's calendar.

Thank you.

Derek

Derek J. Wilson

Law Office of Derek J. Wilson

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----- Forwarded message -----

From: Judge Frederick Link <judgelink@judicatewest.com>
Date: Tue, Jul 11, 2023 at 7:41 AM

Derek – please contact my case manager, Suzi Bush, at JW to set up a meet. I have some availability . Judge Link

From: Derek Wilson <djw@djwlawoffice.com>

Sent: Monday, July 10, 2023 4:49 PM

To: Matthew Holder <mholder@sheppardmullin.com>; Judge Frederick Link <judgelink@judicategwest.com>; MaryAnn Campbell

<maryann@judicategwest.com>; Brandon Neuman <brandon.neuman@nelsonmullins.com>; Gwen Nuttall <GNuttall@sheppardmullin.com>

Subject: Breach of Settlement Agreements by Zermatt Holdings, Judicate West Case No. A296125

Judge Link:

Recently, Mr. Wheeler became aware of a breach of contract by Zermatt in relation to the March 2023 settlement agreement. The 2023 settlement agreement included a 1542 release for Chris Cooper and Mr. Wheeler paid significant consideration to obtain that waiver. You may recall the mediation's last several hours centered on that issue alone. However, Zermatt continues to send threatening litigation letters to Mr. Cooper and threatens litigation for conduct included in the settlement the parties reached in the March 2023 settlement agreement. Zermatt's new actions amount to a breach of contract (the settlement agreement) and unlawful and unfair competition with Mr. Wheeler's ability to have friends recommend his services. Mr. Wheeler would like a hearing on this breach. We would like to reserve a half day for a hearing on these issues in July. What availability do you have for this hearing and would you like principles for the parties to appear or just counsel? Mr. Holder is not available from July 19-29. I am available on July 17, 18, and 31.

Thank you.

-Derek

Derek J. Wilson

Law Office of Derek J. Wilson

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EXHIBIT 2

To the Declaration of Derek J. Wilson

Paperwork for Case A305751 - Peter R. Wheeler, et al. vs. WFA of San Diego, LLC, et al.

4 messages

Jenna@judicategwest.com <jenna@judicategwest.com> Mon, Jul 31, 2023 at 8:46 AM
Reply-To: jenna@judicategwest.com
To: djw@djwlawoffice.com, mholder@sheppardmullin.com, PAS@sspfirm.com


Dear Counsel:

To ensure we have disclosed all participants for the upcoming **Arbitration on 8/14/2023**, please review the attached case contact list and provide us with the names of any parties and/or attorneys that are not listed by 8/3/2023 to avoid delaying the start of your hearing and incurring an additional administrative fee of \$375 for last-minute disclosures.

Please note, ALL attorneys' names are needed even if they are with a firm already listed.

Also, if you have not provided your neutral with a list of your experts and witnesses (if applicable), please do so at this time. Any deadline set by your neutral regarding the expert and witness lists supersedes this reminder, please continue to follow your neutral's instructions.

Sincerely,
Jenna Nurre
Judicate West
(800) 488-8805

 **MailingList.pdf**
123K

Matthew Holder <MHolder@sheppardmullin.com> Mon, Jul 31, 2023 at 11:26 AM
To: "Jenna@judicategwest.com" <jenna@judicategwest.com>, "djw@djwlawoffice.com" <djw@djwlawoffice.com>, "PAS@sspfirm.com" <PAS@sspfirm.com>
Cc: Brandon Neuman <brandon.neuman@nelsonmullins.com>

Please add Brandon Neuman, copied here. <https://www.nelsonmullins.com/professionals/brandon-neuman#main>.

[Quoted text hidden]

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Jenna Nurre <jenna@judicategwest.com> Mon, Jul 31, 2023 at 11:39 AM
To: Matthew Holder <MHolder@sheppardmullin.com>, "djw@djwlawoffice.com" <djw@djwlawoffice.com>, "PAS@sspfirm.com" <PAS@sspfirm.com>
Cc: Brandon Neuman <brandon.neuman@nelsonmullins.com>

Thank you for the update Mr. Holder,

Am I safe to assume that Mr. Neuman is also representing Defendants Zermatt Holdings, LLC, et. al?

Thank you,

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Matthew Holder <MHolder@sheppardmullin.com> Mon, Jul 31, 2023 at 11:40 AM
To: Jenna Nurre <jenna@judicategwest.com>, "djw@djwlawoffice.com" <djw@djwlawoffice.com>, "PAS@sspfirm.com" <PAS@sspfirm.com>
Cc: Brandon Neuman <brandon.neuman@nelsonmullins.com>

Yes, Zermatt and WFASD.

[Quoted text hidden]

EXHIBIT 3

To the Declaration of Derek J. Wilson



Gmail

Case: 3:23-cv-01423-JJH Doc #: 25-1 Filed: 12/13/23 16 of 39. PageID #: 252

Derek Wilson <djw@djwlawoffice.com>

Attention Required: Peter R. Wheeler, et al. vs. WFA of San Diego, LLC, et al. (A305751)

MaryAnn Campbell <maryann@judicategwest.com>

Tue, Aug 15, 2023 at 11:51 AM

Reply-To: MaryAnn Campbell <maryann@judicategwest.com>

To: djw@djwlawoffice.com, mholder@sheppardmullin.com, PAS@sspfirm.com, brandon.neuman@nelsonmullins.com

Good Morning,

Please see attached billing and information for your case with Judicate West. In accordance with California Code of Civil Procedure 1281.97, Judicate West sends all billing for **consumer arbitration matters** in a single email to all parties. Each invoice is due upon receipt and payable by the party named on the invoice. Thank you for your prompt payment.

If you have any questions, please contact me at 714-834-1340.

Thank you,

JENNA NURRE, on behalf of

MARYANN CAMPBELL
Senior Case Manager

402 W. Broadway, Ste 2400 | San Diego, CA 92101
Phone: 619.814.1966 | maryann@judicategwest.com
Direct: 714.852.5193

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2 attachments



PWKAPP_305751_jenna__08-15-2023_1_uekd.pdf
286K



PWKAPP_305751__08-15-2023_2_oukt.pdf
1355K

EXHIBIT 4A

To the Declaration of Derek J. Wilson

Wheeler v. WFASD/Zermatt

Derek Wilson <djw@djwlawoffice.com>

Wed, Oct 25, 2023 at 12:00 PM

To: judgelink@judicategwest.com, "Briefs @ JW" <briefs@judicategwest.com>, Matthew Holder <mholder@sheppardmullin.com>, "Peter A. Saba, Esq." <PAS@sspfirm.com>, Brandon Neuman <brandon.neuman@nelsonmullins.com>

Judge Link:

Mr. Holder and I were able to speak and propose multiple versions of attempted joint proposed orders. Unfortunately, we both had items we wanted in the order that the other side would not agree with. We have agreed to independently provide proposed orders at noon today. Attached is the Claimants' proposed order.

With regard to Claimants' proposed order, paragraphs 1-3, 5, 8, and 10 are to my knowledge not objectionable to the Respondents. I attach an issue brief detailing why the remaining paragraphs are appropriate interpretations of the settlement agreement.

-Derek

Derek J. Wilson

Law Office of Derek J. Wilson

***NOTE* New Address as of 1/1/2023**

2251 San Diego Ave Ste. B-105

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Office: (858) 775-9679


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3 attachments **Ex A to [Prop] Order 2023.3.21 Wheeler SAR.pdf**

903K

 **2023.10.24_Order re Cooper v6.docx**

17K

 **2023.10.25 Issue Brief.pdf**

185K

EXHIBIT 4B

To the Declaration of Derek J. Wilson

Peter Wheeler v. WFA of San Diego, LLC, et al. (A305751)

ORDER REGARDING MARCH 21, 2023 SETTLEMENT AGREEMENT

This matter came before Judge Frederick L. Link in an August 14, 2023 hearing. After discussions with counsel and review of papers submitted, as well as additional discussions on October 24, 2023, Judge Link hereby orders:

1. The settlement agreement the parties reached on March 21, 2023 included a release of Chris Cooper, a.k.a. Martin Christopher Cooper (“Cooper”). A true and correct copy of the agreement is attached hereto as **Exhibit A** (hereinafter the “Agreement”).
2. Cooper is identified in Paragraph 4, subsection a of the Agreement, as a releasee. Cooper was alleged to have wrongfully sent letters dated January 1, 2023, to recipients in Ohio. This claim was resolved by means of the Agreement.
3. The Agreement was intended to, and does, also include Mr. Cooper’s company, Chris Cooper & Company, Inc. (“CCCI”) as a released party.
4. The Agreement includes a dispute resolution provision that requires any dispute (defined as any dispute, including those related to a breach of the agreement but not limited to such) to be resolved by arbitration in the exclusive jurisdiction of Judge Frederick Link (Ret.) at Judicate West in San Diego (the “Venue” and “Arbitration” provisions).
5. Cooper and CCCI are intended third-party beneficiaries to the Agreement.
6. Cooper and CCCI benefit from the Arbitration and Venue provisions of the Agreement.
7. The Agreement contains a provision wherein the Zermatt Releasees (including but not limited to Zermatt Holdings LLC and WFA of San Diego, LLC) released the Wheeler Releasees (including, but not limited to, Peter Wheeler, Cooper, and CCCI) from all known and unknown claims of whatever kind or nature in law, equity, or otherwise, which the Zermatt Parties owned including, but not limited to, all such claims arising out of, or in any way connected with, the disputes resolved in the Agreement.
8. The Agreement also contains a California Civil Code Section 1542 waiver such that the parties released any claims, known or unknown, based on actions or omissions taken before the agreement was entered into on the evening of March 21, 2023.
9. The Agreement does not release any claims against any releasee relating to any acts or conduct engaged in by a releasee after the agreement was entered into on March 21, 2023, so long as this conduct or purported injury does not arise out of, or is not in any way connected to, the disputes settled in the Agreement.
10. This order is intended to clarify the issue for the parties and releasees.

IT IS SO ORDERED.

Dated: October ____, 2023

Hon. Frederick Link

EXHIBIT A

EXHIBIT 5A

To the Declaration of Derek J. Wilson



agreement re forensic discovery

Matthew Holder <MHolder@sheppardmullin.com>

Wed, Oct 25, 2023 at 12:01 PM

To: Judge Frederick Link <judgelink@judicategwest.com>, Derek Wilson <djw@djwlawoffice.com>

Cc: Brandon Neuman <brandon.neuman@nelsonmullins.com>, "Peter A. Saba, Esq." <PAS@sspfirm.com>, Matthew Holder <MHolder@sheppardmullin.com>

Dear Judge Link –

Following up on yesterday's call, the parties were not able to reach agreement on a proposed order for your signature. On behalf of Zermatt and WFASD, we presented two versions to Wheeler and Cooper. The longer version addresses both the scope of the release, and the applicability of the dispute resolution provision, consistent with the legal authority provided in my CMC statement from Friday. The shorter version omits any discussion of the dispute resolution provision (leaving that issue for whoever serves as the arbitrator), and focuses only on the release. Attached are these two proposed versions, for your consideration, along with the settlement agreement that would be Exhibit A.

Regarding the longer version, it accurately describes the dispute resolution provision as being between the "Parties" – meaning Wheeler, Zermatt, and WFASD – whereas Wheeler and Cooper's competing proposal does not. Likewise, it accurately tracks the law set forth in our October 20 CMC statement to you, regarding when a third-party beneficiary can seek to enforce a dispute resolution provision in a contract to which he was not a party. *See Fuentes v. TMCSE, Inc.* (2018) 26 Cal.App.5th 541, 551 (explaining that while a third-party beneficiary can enforce a contract's dispute resolution provision as to claims "arising under the contract," he cannot do so as to "other claims" which do not arise under the contract); *Britton v. Co-op Banking Grp.*, 4 F.3d 742 (9th Cir. 1993) (rejecting attempt by non-party to arbitrate where "[Defendant's] acts are subsequent, independent acts of fraud, unrelated to any provision or interpretation of the contract."). Again, Wheeler and Cooper's competing proposal not only fails to address this distinction, but deliberately removes and obscures it, resulting in a legally incorrect set of rulings.

As for the short version, we have presented it as an alternative to the extent Your Honor does not wish to address the jurisdictional issues related to the dispute resolution provision at this time, instead leaving that for consideration by whoever will serve as the arbitrator in this matter. What remains are the proposed rulings related to the release, which should not be in dispute at this point.

[Quoted text hidden]

3 attachments



Zermatt LONG version of order.docx

18K



Zermatt SHORT version of order.docx

18K



Settlement Agreement and Release Following 3-21-2023 Mediation re Liquidated Damages, 4880-9187-8489 v 1.pdf

442K

EXHIBIT 5B

To the Declaration of Derek J. Wilson

Peter Wheeler v. WFA of San Diego, LLC, et al. (A305751)

ORDER REGARDING MARCH 21, 2023 SETTLEMENT AGREEMENT

This matter came before Judge Frederick L. Link in an August 14, 2023 hearing. After discussions with counsel and review of papers submitted, as well as additional discussions on October 24, 2023, Judge Link hereby orders:

1. The settlement agreement the parties reached on March 21, 2023 included a release of Chris Cooper, a.k.a. Martin Christopher Cooper (“Cooper”). A true and correct copy of the settlement agreement is attached hereto as **Exhibit A** (hereinafter the “Agreement”).
2. Cooper is identified in Paragraph 4, subsection a of the Agreement as a releasee.
3. The Agreement was intended to, and does, also include Mr. Cooper’s company, Chris Cooper & Company, Inc (“CCCI”), as a released party.
4. As releasees, Cooper and CCCI are intended third-party beneficiaries to the Agreement.
5. The Agreement contains a California Civil Code Section 1542 waiver such that the parties released any claims, known or unknown, based on actions taken before the Agreement was entered into on March 21, 2023.
6. The Agreement does not release any claims relating to any acts or conduct engaged in by a releasee after the Agreement was entered into on March 21, 2023.
7. The Agreement is to be construed in accordance with, and governed by, California law.
8. This order is intended to clarify the issue for the parties and releasees.

IT IS SO ORDERED.

Dated: October ____, 2023

Hon. Frederick Link

EXHIBIT A

EXHIBIT 5C

To the Declaration of Derek J. Wilson

Peter Wheeler v. WFA of San Diego, LLC, et al. (A305751)

ORDER REGARDING MARCH 21, 2023 SETTLEMENT AGREEMENT

This matter came before Judge Frederick L. Link in an August 14, 2023 hearing. After discussions with counsel and review of papers submitted, as well as additional discussions on October 24, 2023, Judge Link hereby orders:

1. The settlement agreement the parties reached on March 21, 2023 included a release of Chris Cooper, a.k.a. Martin Christopher Cooper (“Cooper”). A true and correct copy of the settlement agreement is attached hereto as **Exhibit A** (hereinafter the “Agreement”).
2. Cooper is identified in Paragraph 4, subsection a of the Agreement as a releasee.
3. The Agreement was intended to, and does, also include Mr. Cooper’s company, Chris Cooper & Company, Inc (“CCCI”), as a released party.
4. As releasees, Cooper and CCCI are intended third-party beneficiaries to the Agreement.
5. The Agreement contains a California Civil Code Section 1542 waiver such that the parties released any claims, known or unknown, based on actions taken before the Agreement was entered into on March 21, 2023.
6. The Agreement does not release any claims relating to any acts or conduct engaged in by a releasee after the Agreement was entered into on March 21, 2023.
7. The Agreement is to be construed in accordance with, and governed by, California law.
8. The parties to the Agreement (Peter R. Wheeler, Zermatt Holdings LLC, and WFA of San Diego, LLC) agreed to submit any disputes between them, including related to a breach of the Agreement, to the exclusive jurisdiction of Judicate West in San Diego, for arbitration (the “Dispute Resolution Provision”).
9. Cooper and CCCI are third-party beneficiaries of the Dispute Resolution Provision with respect to claims arising out of the Agreement, *e.g.*, claims asserting that the release has been violated.
10. Cooper and CCCI are not third-party beneficiaries of the Dispute Resolution with respect to claims that do not arise out of the Agreement, *e.g.*, claims based on conduct which came after March 21, 2023.
11. This order is intended to clarify the issue for the parties and releasees.

IT IS SO ORDERED.

Dated: October ____, 2023

Hon. Frederick Link

EXHIBIT A

EXHIBIT 6A

To the Declaration of Derek J. Wilson



Gmail

Case: 3:23-cv-01423-JJH Doc #: 25-1 Filed: 12/13/23 30 of 39. PageID #: 266

Derek Wilson <djw@djwlawoffice.com>

Regarding Peter R. Wheeler, et al. vs. WFA of San Diego, LLC, et al. A305751

MaryAnn Campbell <maryann@judicategwest.com>

Mon, Nov 6, 2023 at 9:35 AM

Reply-To: maryann@judicategwest.com

To: djw@djwlawoffice.com, mholder@sheppardmullin.com, brandon.neuman@nelsonmullins.com, PAS@sspfirm.com

Cc: GNuttall@sheppardmullin.com

Good morning Counsel,

Please see attached for the Order Regarding the March 21, 2023 Settlement Agreement.

Thank you,

MARYANN CAMPBELL
Senior Case Manager

402 W. Broadway, Ste 2400 | San Diego, CA 92101
Phone: 619.814.1966 | maryann@judicategwest.com
Direct: 714.852.5193

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 **ORDER REGARDING MARCH 21, 2023 SETTLEMENT AGREEMENT.pdf**
1043K

EXHIBIT 6B

To the Declaration of Derek J. Wilson

Peter Wheeler v. WFA of San Diego, LLC, et al. (A305751)

ORDER REGARDING MARCH 21, 2023 SETTLEMENT AGREEMENT

This matter came before Judge Frederick L. Link in an August 14, 2023 hearing. After discussions with counsel and review of papers submitted, as well as additional discussions on October 24, 2023, Judge Link hereby orders:

1. The settlement agreement the parties reached on March 21, 2023 included a release of Chris Cooper, a.k.a. Martin Christopher Cooper (“Cooper”). A true and correct copy of the agreement is attached hereto as **Exhibit A** (hereinafter the “Agreement”).
2. Cooper is identified in Paragraph 4, subsection a of the Agreement, as a releasee. Cooper was alleged to have wrongfully sent letters dated January 1, 2023, to recipients in Ohio. This claim was resolved by means of the Agreement.
3. The Agreement was intended to, and does, also include Mr. Cooper’s company, Chris Cooper & Company, Inc. (“CCCI”) as a released party.
4. The Agreement includes a dispute resolution provision that requires any dispute (defined as any dispute, including those related to a breach of the agreement but not limited to such) to be resolved by arbitration in the exclusive jurisdiction of Judge Frederick Link (Ret.) at Judicate West in San Diego (the “Venue” and “Arbitration” provisions).
5. Cooper and CCCI are intended third-party beneficiaries to the Agreement.
6. Cooper and CCCI benefit from the Arbitration and Venue provisions of the Agreement.
7. The Agreement contains a provision wherein the Zermatt Releasees (including but not limited to Zermatt Holdings LLC and WFA of San Diego, LLC) released the Wheeler Releasees (including, but not limited to, Peter Wheeler, Cooper, and CCCI) from all known and unknown claims of whatever kind or nature in law, equity, or otherwise, which the Zermatt Parties owned including, but not limited to, all such claims arising out of, or in any way connected with, the disputes resolved in the Agreement.
8. The Agreement also contains a California Civil Code Section 1542 waiver such that the parties released any claims, known or unknown, based on actions or omissions taken before the agreement was entered into on the evening of March 21, 2023.
9. The Agreement does not release any claims against any releasee relating to any acts or conduct engaged in by a releasee after the agreement was entered into on March 21, 2023, so long as this conduct or purported injury does not arise out of, or is not in any way connected to, the disputes settled in the Agreement.
10. This order is intended to clarify the issue for the parties and releasees.

IT IS SO ORDERED.

Dated: November 3, 2023

Frederick L. Link
Hon. Frederick Link

Exhibit A

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Confidential Settlement Agreement and Mutual General Release (the “Agreement”) is made by and between PETER R. WHEELER (“Wheeler”), on the one hand, and ZERMATT HOLDINGS LLC, a North Carolina limited liability company (“Zermatt”) and WFA of San Diego, LLC, a North Carolina limited liability company (“WFASD”) (together, the “Zermatt Parties”), on the other hand. Each of Wheeler, Zermatt, and WFASD shall be referred to as a “Party,” and together as “the Parties.”

1. Recitals.

a. On October 21, 2022, the Parties settled their underlying arbitration and civil litigation, and otherwise entered into a mutual general release (the “October 2022 Settlement”). As part of the October 2022 Settlement, the Zermatt Parties paid \$750,000.00 to Wheeler on or about December 31, 2022. In addition, through December 31, 2022, Wheeler continued to owe certain non-solicitation and non-competition obligations to the Zermatt Parties pursuant to the underlying Asset Purchase Agreement (“APA”) between the Parties.

b. Disputes have arisen since the October 2022 Settlement regarding the Parties’ respective compliance with their obligations under that contract, as well as the ongoing obligations under the APA. Among other things, the Zermatt Parties accuse Wheeler of breaching the non-solicitation and non-competition covenants in the APA via his conduct between the October 2022 Settlement and December 31, 2022, of disparaging the Zermatt Parties in violation of the October 2022 Settlement, and of breaching the confidentiality of the October 2022 Settlement. Among other things, Wheeler accuses the Zermatt Parties of disparaging him in violation of the October 2022 Settlement. Both sides have claimed damages against the other, and have also claimed a right to prevailing party attorney’s fees pursuant to the October 2022 Settlement and/or APA.

c. The Parties have vigorously contested their competing claims and defenses, including in connection with the October 2022 Settlement and APA. These competing claims and defenses are referred collectively to as the “Disputes.” Except as otherwise set forth herein, the Parties desire to resolve the Disputes, and all issues raised by or related to the Disputes, along with all known and unknown claims as set forth in the releases below, without the further expenditure of time or the expense of contested litigation, notwithstanding the fact that they might learn new facts and develop new arguments were they to pursue contested litigation and the discovery process related thereto. For these reasons, they have entered into this Agreement.

2. No Admission of Liability. The Parties expressly deny any violation of any federal, state or local statute, ordinance, rule, regulation, policy, order or other law, or any contract or other duty owed to each other, and further deny any liability to each other. This Agreement is the compromise of disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the Parties, by whom liability is expressly denied. Accordingly, while this Agreement resolves all issues referenced herein, it does not constitute an adjudication or finding on the merits of the allegations in the Disputes and it is not, and shall not be construed as, an admission by the Parties, or any of them, of any wrongdoing or any liability.

3. Consideration by Wheeler. Except as otherwise set forth herein, in consideration of and in return for the promises and covenants undertaken herein by the Zermatt Parties, and for other good and valuable consideration, receipt of which is hereby acknowledged:

a. Wheeler shall pay to the Zermatt Parties the total gross sum of Two Hundred and Thirty-Five Thousand Dollars and Zero Cents (\$235,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by way of two checks made out to Zermatt Holdings LLC in the amount of \$135,000 and \$100,000. The first check for \$135,000 shall be delivered via overnight to Louis Dworsky at 903 Long Cove Court, Wilmington, North Carolina 28405 by March 31, 2023, and the second check for \$100,000 shall be delivered in the same manner by April 28, 2023.

b. Except as otherwise set forth herein, Wheeler, on behalf of himself, his predecessors, successors, parents, owners, subsidiaries, and other affiliates, hereby acknowledges full and complete satisfaction of and does hereby releases, absolves and discharges the Zermatt Parties, including their predecessors, successors, owners, shareholders, parent entities, subsidiaries, affiliates, trustees, insurers, officers, directors, employees, attorneys and agents, whether current or former (the "Zermatt Party Releasees"), from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, grievances, wages, vacation payments, severance payments, obligations, commissions, overtime payments, debts, profit sharing claims, expenses, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown to Wheeler which Wheeler now owns or holds or has at any time owned or held as against the Zermatt Party Releasees, or any of them, including specifically but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, grievances, agreements, obligations and causes of action, known or unknown, suspected or unsuspected: (1) arising out of or in any way connected with the Disputes; or (2) arising out of or in any way connected with any claim, loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Zermatt Party Releasees, or any of them, committed or omitted on or before the date that Wheeler signs this Agreement. WHEELER AGREES AND ACKNOWLEDGES HE IS WAIVING ANY RIGHT TO RECOVERY BASED ON STATE OR FEDERAL AGE, SEX, PREGNANCY, RACE, COLOR, NATIONAL ORIGIN, MARITAL STATUS, RELIGION, VETERAN STATUS, DISABILITY, SEXUAL ORIENTATION, MEDICAL CONDITION OR OTHER ANTI-DISCRIMINATION LAWS, INCLUDING, WITHOUT LIMITATION, TITLE VII, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE AMERICANS WITH DISABILITIES ACT AND THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, ALL AS AMENDED, WHETHER SUCH CLAIM BE BASED UPON AN ACTION FILED BY EMPLOYEE OR BY A GOVERNMENTAL AGENCY. This release does not, however, release claims that cannot be released as a matter of law, nor does it release any claims based on any failure by the Zermatt Parties to perform under the terms of this Agreement.

4. Consideration by the Zermatt Parties. Except as otherwise set forth herein, in consideration of and in return for the promises and covenants undertaken herein by Wheeler, and for other good and valuable consideration, receipt of which is hereby acknowledged:

a. Except as otherwise set forth herein, the Zermatt Parties, on behalf of themselves, their predecessors, successors, owners, subsidiaries, and other affiliates, hereby acknowledge full and complete satisfaction of and do hereby release, absolve and discharge Wheeler, including his predecessors, successors, owners, shareholders, parent entities, subsidiaries, affiliates, trustees, insurers, officers, directors, employees, attorneys and agents, whether current or former, as well as Chris Cooper (the “Wheeler Releasees”), from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, grievances, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, in each case whether known or unknown to the Zermatt Parties, which the Zermatt Parties now own or hold or have at any time owned or held as against the Wheeler Releasees, including but not limited to all such claims (1) arising out of or in any way connected with the Disputes, or (2) arising out of or in any way connected with any claim, loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Wheeler Parties, committed or omitted on or before the date that the Zermatt Parties sign this Agreement. This release does not, however, release claims that cannot be released as a matter of law, nor does it release any claims based on any failure by Wheeler to perform under the terms of this Agreement.

5. General Release of All Claims. Except as otherwise set forth herein or for purposes of enforcing this Agreement, it is the intention of the Parties in executing this instrument that it shall be effective as a bar to each and every claim, demand, grievance and cause of action hereinabove specified. In furtherance of this intention, the Parties hereby expressly waive any and all rights and benefits conferred upon each other by the provisions of Section 1542 of the California Civil Code and expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, demands and causes of action, if any, as well as those relating to any other claims, demands and causes of action hereinabove specified. Section 1542 provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Having been so apprised, the Parties nevertheless hereby voluntarily elect to and do waive the rights described in Civil Code Section 1542 and elect to assume all risks for claims herein specified that now exist in their favor, *known or unknown*.

6. October 2022 Settlement. Except where explicitly stated in this Agreement, the terms and conditions of the October 2022 Settlement remains in full force and effect, and is not intended to be superseded by this Agreement.

7. Entire Agreement. Except as otherwise set forth herein, the undersigned each acknowledge and represent that no promise or representation not contained in this Agreement has been made to them and acknowledge and represent that this Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the

compromise and settlement of the subjects referenced herein. The undersigned further acknowledge that the terms of this Agreement are contractual and not a mere recital. Any modification to this Agreement must be in writing and signed by the Parties.

8. Governing Law and Dispute Resolution. This Agreement shall be construed in accordance with, and be deemed governed by, the laws of the State of California. In the event of any dispute between them, including related to a breach of this Agreement, or the October 2022 Settlement, the Parties agree that they will submit such dispute to the exclusive jurisdiction of Judge Frederick Link (Ret.) for resolution, with venue in San Diego, California, without prejudice to the right to seek preliminary injunctive relief in court as may be necessary and appropriate. If for any reason Judge Link is not able to serve as the arbitrator, the Parties agree to appoint an arbitrator using Judicate West, and hereby waive any right to a jury trial. In any action arising out of or related to this Agreement, or to otherwise enforce any provision in this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

9. No Prior Assignments. Except as provided herein, the Parties hereby represent and warrant that they are the sole and exclusive owners of the rights, claims and causes of action herein released, which are free of any pledges, charges, equities, claims, covenants, liens or encumbrances in favor of any other person, firm or institution, and the Parties have not heretofore assigned or transferred, or purported to assign or transfer, to any other third person or entity any claim, right, liability, demand, obligation, expense, action or causes of action being waived or released pursuant to this Agreement.

10. Full Authority. Each Party hereby represents and warrants to the other Party that it has the full right, power and authority to enter into this Agreement, to grant the releases contained herein, and to perform its obligations hereunder. The execution of this Agreement by the individual whose signature is provided at the end of this Agreement on behalf of such Party, and the delivery of this Agreement by such Party, have been duly authorized by all necessary action on the part of such Party. This Agreement has been executed and delivered by such Party and (assuming due authorization, execution and delivery by the other Party hereto) constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

11. Benefit of Successors. This Agreement and all covenants and releases set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, parent companies, subsidiary companies, agents, attorneys, officers, employees, directors and shareholders.

12. Not Construed Against Drafting Party. This Agreement and the provisions contained herein shall not be construed or interpreted for or against either Party hereto because that Party drafted or caused that Party's legal representative to draft any of its provisions.

13. Representation by Counsel and Informed Consent. The Parties expressly acknowledge and represent that they have been represented by counsel in the negotiations culminating in this Agreement and that each of them has read this Agreement, reviewed the same, and fully understand the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of California Civil Code section 1542. The

Parties further agree and acknowledge they have been given reasonable and adequate time to review and consider this Agreement, and decide whether to enter into this Agreement.

14. Severability. If any provision of this Agreement or application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same Agreement. Facsimile, PDF and electronic signatures on this Agreement shall be as legally binding as an original signature.

16. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party"; and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his/her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

I have read the foregoing Confidential Settlement Agreement and Mutual General Release and I accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

PLEASE READ CAREFULLY. THIS AGREEMENT
CONTAINS A MUTUAL GENERAL RELEASE OF ALL
KNOWN AND UNKNOWN CLAIMS.


Dated: March 21, 2023



Peter W. Wheeler, individually and as
controlling shareholder of Wheeler Frost
Associates, Inc.

Dated: March 21, 2023

Dated: March 21, 2023



Zermatt Holdings LLC

By: Louis Dworsky

Its: Managing Member



WFA of San Diego, LLC

By: Louis Dworsky

Its: Managing Member